UNITED STATES PATENT AND TRADEMARK OFFICE

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10/780,313	02/17/2004	Daniel Opperman	G08.072/U	1068

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BUCKLEY, MASCHOFF & TALWALKAR LLC
50 LOCUST AVENUE
NEW CANAAN, CT 06840

EXAMINER
ALI, HATEM M

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on *27 October 2009*.
2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *20-23,38 and 39* is/are pending in the application.
    4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) *20-23 and 38-39* is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a) ☐ All   b) ☐ Some * c) ☐ None of:
        1. ☐ Certified copies of the priority documents have been received.
        2. ☐ Certified copies of the priority documents have been received in Application No. _____.
        3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1.   A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on **10/27/09** has been entered.

2.   The following is **an office action** in response to a communication received on **10/27/09.**

Acknowledgement

3.   Claim **Status:**

   ❖ **Newly added** claims: **38-39**

   ❖ **Amended** claims**: 20-21**

   ❖ **Pending** claims : **20-23** and **38-39**

Claim Rejections - 35 USC § 112

4.   The following is a quotation of **the second paragraph** of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5.   **Claims 20-21** and **38-39** are rejected under 35 U.S.C. 112, second paragraph,

as being indefinite for failing to particularly point out and distinctly claim the subject

matter which applicant regards as the invention.

Specifically the newly added [amended] recitations, in claims 20 & 38 at lines 7-

10 and 21 & 39 at lines 8-11**, "receiving via the processor a user defined selection of an**

order type alternative from said first order type menu; providing via the processor **the**

selection to determine a selection of at least **one order type alternatives** to be

displayed as part of **a second order type menu"**, are not clear and distinctly described

in specification. Proper and detailed clarification is required.

Claim Rejections - 35 USC § 103

6.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

7.   **Claims 20–23** and **38-39** are rejected under 35 U.S.C. 103 (a) as being

unpatentable over **Himmelstein** (2002/0038278) in views of **Russo** (2004/068458).

As per claim 20, **Himmelstein** discloses a processor-implemented method

comprising:

displaying via a processor on a display screen of a computer a first order type

menu at times when a first order destination alternative is selected from an order

destination menu **(Fig.1;** via display screen   of computers and **para 0050-052**; via

barter website **106** or pull down menus **507** and also **para 0147;** via inherently

destination at NYSE and the NASDAQ market**)** the first order destination alternative

representing a first order destination, <u>received and processed to determine</u> the first

order type menu listing only order type alternatives that represent order types supported

by the first order destination;

displaying <u>via the processor</u> on said display screen of said computer a second

order type menu at times when a second order destination alternative is selected from

the order destination menu, second order destination alternative representing a second

order destination, <u>received and processed to determine</u> the second order type menu

listing only order type alternatives that represent order types supported by the second

order destination, the second order type menu being different from the first order type

menu (**para 0052**, lines 12; via an array of pull down menus **507** for selection of second

order type menu different from first order type);

Himmelstein did not explicitly disclose the step of <u>receiving via the processor a</u>

<u>user defined selection of an order type alternative from said first order type menu;</u>

<u>providing via the processor the selection to determine a selection of at least one order</u>

<u>type alternatives to be displayed as part of a second order type menu.</u>

However, **Russo** being in the same field of invention discloses the steps of

<u>receiving via the processor a user defined selection of an order type alternative from</u>

<u>said first order type menu; providing via the processor the selection to determine a</u>

<u>selection of at least one order type alternatives to be displayed as part of a second</u>

order type menu (**para 0229-0242;** via Three options and Four mode of operation with **Machine 1**).

Therefore, it would have been obvious to an ordinary skill in the art at the time of invention was made to modify the disclosure of *Himmelstein* and include the features mentioned by *Russo* to facilitate a virtual stock market that fits in the 'user' of the machine's pocket [i.e. the stock market in the pocket] with displays depicting around the clock, live, real time world wide economic data onto the viewing screen [window **4G**] to easy play with Menus for Symbol, destination or order types.

Himmelstein did not explicitly disclose further that the first order destination and the second order destination are <u>at least one</u> of a securities exchange, a market maker, an ECN, and a trading market place; and order type alternatives included in both said first and second order type menus include a market order type and a limit order type.

However, *Russo* being in the same field of invention discloses that the first order destination and the second order destination are <u>at least one</u> of a securities exchange, a market maker, an ECN, and a trading market place; and order type alternatives included in both said first and second order type menus include a market order type and a limit order type.(**Abstract** and **Figs 1-108** , para **0001-0003** - via viewing user's screen window of the machine's interface; para **0010** - via a logic field- provision of two choices; **para 0240**-via choosing another symbol of exchange [**Fig-057**] as destination ; **para 0233** and **0241** – via a limit order trade [type] and trade per share price [market order type] respectively).

Therefore, it would have been obvious to an ordinary skill in the art at the time of invention was made to modify the disclosure of *Himmelstein* and include the features mentioned by *Russo* to facilitate the user of the **machine-1** Dissemination Center then immediately signals ... search engine to trade ...The user ... of **NYSE** listed **CMGI** stock ... wait for the results (**para-0234**)

As per claim 21, *Himmelstein* discloses a processor-implemented method comprising:

displaying via the processor on a display screen of a computer a first order destination menu at times when a first financial instrument trading symbol is displayed in an order input area of a user interface, received and processed to determine (**Fig.1** and **para 0050-0052**; via barter website **106** or pull down menus **507** and also **para 00147** inherently destination at NYSE and the NASDAQ market. First instrument trading symbol **Aetna** Stock-**AET** at line 21 of para **0041**), the first order destination menu listing only order destination alternatives that correspond to order destinations that support trading in a first financial instrument that correspond to the first financial instrument trading symbol; and

displaying via the processor on said display screen of said computer a second order destination menu at times when a second financial instrument trading symbol is displayed in the order input area, received and processed to determine second order destination alternative representing a second order destination, the second order type menu listing only order type alternatives that represent order types supported by the

second odder destination, the second order type menu being different from the first

order type menu, the second order destination menu being different from the first order

destination men (**para 0052**, lines 12; via an array of pull down menus **507** for selection

of second order type menu different from first type. Second Instrument trading Symbol -

the DuPont Option **DD** also in **Fig.5A**).

Himmelstein did not explicitly disclose the step of <u>receiving via the processor a</u>

<u>user defined selection of an order type alternative from said first order type menu;</u>

<u>providing via the processor the selection to determine a selection of at least one order</u>

<u>type alternatives to be displayed as part of a second order type menu</u> However, *Russo*

being in the same field of invention discloses the steps of <u>receiving via the processor a</u>

<u>user defined selection of an order type alternative from said first order type menu;</u>

<u>providing via the processor the selection to determine a selection of at least one order</u>

<u>type alternatives to be displayed as part of a second order type menu</u> (**para 0229-0242;**

via Three option and Four mod of operation with **Machine 1**).

Therefore, it would have been obvious to an ordinary skill in the art at the time of

invention was made to modify the disclosure of *Himmelstein* and include the features

mentioned by *Russo* to facilitate a virtual stock market that fits in the 'user' of the

machine's pocket [i.e. the stock market in the pocket] with displays depicting around the

clock, live, real time world wide economic data onto the viewing screen [window 4G] to

easy play with Menus for Symbol, destination or order types.

Himmelstein did not explicitly disclose that at least one of the order destination

alternatives listed by the first order destination menu is different from each order

destination alternative listed by the second order destination menu; and each of the order destinations is selected from <u>at least one</u> of securities, a market maker, an ECN and a trading market place.

However, **Russo** being in the same field of invention discloses that at least one of the order destination alternatives listed by the first order destination menu is different from each order destination alternative listed by the second order destination menu; and each of the order destinations is selected from <u>at least one</u> of a securities, a market maker, an ECN and a trading market place (**Abstract** and **Figs 1-108** , para **0001-0003** - via viewing screen window with user's of the machine's interface; **para 0010** - via a logic field- provision of two choices; **para 0240**-via choosing another symbol of exchange [**Fig-057**] as destination ; **para 0233** and **0241** – via a limit order trade [type] and trade per share price [market order type] respectively).

Therefore, it would have been obvious to an ordinary skill in the art at the time of invention was made to modify the disclosure of **Himmelstein** and to include the features mentioned by **Russo** to facilitate the user of the **machine-1** Dissemination Center then immediately signals ...search engine to Trade ... The user ... of **NYSE** listed **CMGI** stock ... wait for the results (**para-0234**).

As per claim 22, Himmelstein discloses that the first financial instrument trading symbol represents a first common stock (**para 0041**, line 21; via **Aetna** Stock symbol-**AET, 234**); and the second financial instrument trading symbol represents a second common stock (**para 0041**, line 19; via **DuPont** Stock-**DD, 228**).

As per claim 23, *Himmelstein* discloses that the first financial instrument trading symbol represents a common stock (**para 0041** line 21; via **Aetna** Stock symbol-**AET, 234**); and the second financial instrument trading symbol represents an option (**para 0051**, line 12; via the **DuPont** Option-**DD**).

Claims 24-37 (canceled)

As per claim 38 (**new**), *Himmelstein* discloses a processor-readable medium storing processor-issuable instructions to:

display via a processor on a display screen of a computer a first order type menu at times when a first order destination alternative is selected from an order destination menu (**Fig.1;** via display screen of computers and **para 0050-0052**; via barter website **106** or pull down menus **507** and also **para 0147;** via inherently destination at NYSE and the NASDAQ market), the first order destination alternative representing a first order destination, received and processed to determine the first order type menu listing only order type alternatives that represent order types supported by the first order destination; and

displaying on said display screen of said computer a second order type menu at times when a second order destination alternative is selected from the order destination menu, second order destination alternative representing a second order destination, received and processed to determine the second order type menu listing only order type alternatives that represent order types supported by the second order destination, the second order type menu being different from the first order type menu   (**para 0052,**

lines 12; via an array of pull down menus **507** for selection of second order type menu

different from first type);

Himmelstein did not explicitly disclose the step of <u>receiving via the processor a</u>

<u>user defined selection of an order type alternative from said first order type menu;</u>

<u>providing via the processor the selection to determine a selection of at least one order</u>

<u>type alternatives to be displayed as part of a second order type menu.</u>

However, *Russo* being in the same field of invention discloses the steps of

<u>receiving via the processor a user defined selection of an order type alternative from</u>

<u>said first order type menu; providing via the processor the selection to determine a</u>

<u>selection of at least one order type alternatives to be displayed as part of a second</u>

<u>order type menu</u> (**para 0229-0242;** via Three options and Four mode of operation with

Machine 1).

Therefore, it would have been obvious to an ordinary skill in the art at the time of

invention was made to modify the disclosure of *Himmelstein* and include the features

mentioned by *Russo* to facilitate a virtual stock market that fits in the 'user' of the

machine's pocket [i.e. the stock market in the pocket] with displays depicting around the

clock, live, real time world wide economic data onto the viewing screen [window 4G] to

easy play with Menus for Symbol, destination or order types.

Himmelstein fails explicitly to disclose that the first order destination and

the second order destination are at least one of a securities exchange, a market maker,

an ECN, and a trading market place; and order type alternatives included in both said

and second order type menus include a market order type and a limit order type.

However, *Russo* being in the same field of invention discloses that the first order

destination and the second order destination are at least one of a securities exchange,

a market maker, an ECN, and a trading market place; and order type alternatives

included in both said and second order type menus include a market order type and a

limit order type (see **Abstract** and **Figs. 1-108** , para **0001-0003** - via viewing screen

window with user's of the machine's interface; **para 0010** - via a logic field- provision of

two choices; **para 0240**-via choosing another symbol of exchange [**Fig.-057**] as

destination ; **para 0233** and **0241** – via a limit order trade [type] and trade per share

price [market order type] respectively).

Therefore, it would have been obvious to an ordinary skill in the art at the time of

invention was made to modify the disclosure of *Himmelstein* and include the features

mentioned by *Russo* to facilitate the user of the **machine-1** Dissemination Center then

immediately signals … search engine to Trade ... The user … of **NYSE** listed **CMGI**

stock … wait for the results (**para-0234**)

As per claim 39 (New**)**, *Himmelstein* discloses a processor-readable medium

storing processor-issuable instructions to**:**

display on a display screen of a computer a first order destination menu at times

when a first financial instrument trading symbol is displayed in an order input area of a

user interface, received and processed to determine (**Fig.1** and **para 0050-0052**; via

barter website **106** or pull down menus **507** and also **para 00147** inherently destination

at NYSE and the NASDAQ market. First instrument trading symbol **Aetna** Stock-**AET,**

at line 21 of para **0041**), the first order destination menu listing only order destination

alternatives that correspond to order destinations that support trading in a first financial instrument that correspond to the first financial instrument trading symbol; and

displaying on said display screen of said computer a second order destination menu at times when a second financial instrument trading symbol is displayed in the order input area, received and processed to determine second order destination alternative representing a second order destination, the second order type menu listing only order type alternatives that represent order types supported by the second odder destination, the second order type menu being different from the first order type menu, the second order destination menu being different from the first order destination men (**para 0052**, lines 12; via an array of pull down menus **507** for selection of second order type menu different from first type. Second Instrument trading Symbol - the DuPont Option **DD** also in **Fig.5A**).

Himmelstein did not explicitly disclose the step of <u>receiving via the processor a</u> <u>user defined selection of an order type alternative from said first order type menu;</u> <u>providing via the processor the selection to determine a selection of at least one order</u> <u>type alternatives to be displayed as part of a second order type menu.</u>

However, ***Russo*** being in the same field of invention discloses the steps of <u>receiving via the processor a user defined selection of an order type alternative from</u> <u>said first order type menu; providing via the processor the selection to determine a</u> <u>selection of at least one order type alternatives to be displayed as part of a second</u> <u>order type menu</u> (**para 0229-0242;** via Three options and Four mode of operation with **Machine 1**).

Therefore, it would have been obvious to an ordinary skill in the art at the time of invention was made to modify the disclosure of *Himmelstein* and include the features mentioned by *Russo* to facilitate a virtual stock market that fits in the 'user' of the machine's pocket [i.e. the stock market in the pocket] with displays depicting around the clock, live, real time world wide economic data onto the viewing screen [window **4G**] to easy play with Menus for Symbol, destination or order types.

Himmelstein did not explicitly disclose that at least one of the order destination alternatives listed by the first order destination menu is different from each order destination alternative listed by the second order destination menu; and each of the order destinations is selected from <u>at least one</u> of securities, a market maker, an ECN and a trading market place.

However, *Russo* being in the same field of invention discloses that at least one of the order destination alternatives listed by the first order destination menu is different from each order destination alternative listed by the second order destination menu; and each of the order destinations is selected from at least one of a securities, a market maker, an ECN and a trading market place (**Abstract** and **Figs 1-108** , para **0001-0003** - via viewing screen window with user's of the machine's interface; **para 0010** - via a logic field- provision of two choices; **para 0240**-via choosing another symbol of exchange [**Fig-057**] as destination ; **para 0233** and **0241** – via a limit order trade [type] and trade per share price [market order type] respectively).

Therefore, it would have been obvious to an ordinary skill in the art at the time of invention was made to modify the disclosure of *Himmelstein* and to include the

features mentioned by *Russo* to facilitate the user of the **machine-1** Dissemination

Center then immediately signals ...search engine to trade ... The user ... of **NYSE**

listed **CMGI** stock ... wait for the results (**para-0234**).

Response to Arguments

8.   Applicant's **arguments** filed on **10/27/09** have been fully considered but they are

not all persuasive.

9.

       A) Applicant's **arguments** (Remarks page 6, para 3+) related to claim rejections-

35 U.S.C. **101,** with amendments is persuasive; as such the **101** rejection has been

withdrawn by **the Examiner**.

       B) In the Remarks Applicant **argues** in **substance:**

       Applicant further submits (Remark page 10, para2] that **Russo** fails to remedy

the deficiencies identified in **Himmelstein** with regard to independent claim 20

[specifically amended part applicant cited as Instead of the claimed "... receiving via the

processor a user defined selection of order type alternative from said first order type

menu; providing via the processor the selection to determine a selection of at least one

order type alternatives to be displayed as partt of a second order type menu ..."].

       In response:

The Examiner respectfully disagrees with applicant's assertion. The Examiner respectfully noted again that prior art reference **Russo** teaches in (**para 0229-0242;** via Three options and Four mode of operation with **Machine 1**) to facilitate to have a virtual stock market that fits in the 'user' of the machine's pocket [i.e. the stock market in the pocket] with displays depicting around the clock, live, real time world wide economic data onto the viewing screen [window **4G**] to easy play with Menus for Symbol, destination or order types.

Conclusion

10.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to HATEM ALI whose telephone number is (571)270-3021 and Fax (571)270-4021. The examiner can normally be reached on 8.00 to 6.30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, HANI KAZIMI can be reached on 571-272-6745. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Hatem Ali
Examiner
Art Unit 3696

/Hani M. Kazimi/
Primary Examiner, Art Unit 3691